

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 3, 2003

IN RE:

PETITION OF UNITED CITIES GAS COMPANY
FOR APPROVAL OF A FRANCHISE AGREEMENT
WITH MURFREESBORO, TENNESSEE

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DOCKET NO.
02-00391

INITIAL ORDER OF HEARING OFFICER ON THE MERITS

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority") for a decision on the merits with regard to the *Petition of United Cities Gas Company for Approval of a Franchise Agreement with Murfreesboro, Tennessee* (the "Petition") filed by United Cities Gas Company ("United Cities" or the "Company").

United Cities' Petition

In its *Petition*, filed on April 9, 2002, United Cities requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107, of a franchise agreement contained in a Murfreesboro, Tennessee ordinance entered by the city of Murfreesboro, Tennessee on June 8, 2000 and effective as of that date. As stated in United Cities' *Petition*, the ordinance grants to United Cities the nonexclusive right to provide natural gas service in Murfreesboro, Tennessee for a term of fifteen years. A copy of the ordinance is attached hereto as Exhibit 1. No person sought intervention in this matter.

Pursuant to a public notice issued on May 1, 2003, a Hearing on the merits of United Cities' *Petition* was held on May 28, 2003. The Company was represented by the following counsel:

Misty Smith Kelley, Esq.; Baker, Donelson, Bearman & Caldwell, 1800 Republic Center, 633 Chestnut Street, Chattanooga, Tennessee 37450

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that "such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest."¹ Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority "shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . ."²

Pre-filed Testimony of Jay Murray

On January 6, 2003, United Cities filed the Direct Testimony of Jay Murray, Operations Supervisor for United Cities, Murfreesboro, Tennessee. Mr. Murray stated that United Cities' natural gas distribution system in Murfreesboro contains approximately 2.9 million linear feet of pipe and is interconnected with and dependent upon the distribution system located within the city limits of Murfreesboro. United Cities serves approximately 15,000 customers in Murfreesboro, of whom approximately 85% are residential and 15% are

¹ Tenn. Code Ann. § 65-4-107.

² *Id.*

commercial and industrial. The majority of the pipeline in United Cities' distribution system is located within the public rights-of-way. Mr. Murray stated that without access to these public rights-of-way, United Cities could not adequately operate, maintain, or replace its distribution system.

According to Mr. Murray, United Cities and its predecessors have operated for many years in Murfreesboro under various franchise agreements with the County. The previous twenty year agreement having expired, United Cities entered into negotiations with the City in 2000 for a new agreement. Representatives of United Cities contacted Thomas Reed, Murfreesboro City Attorney, and negotiated the terms of the new agreement with the City Council and Mr. Reed. According to Mr. Murray, the new franchise agreement was the result of arm's-length negotiations between United Cities and Murfreesboro.

Mr. Murray further stated:

Without this franchise, United Cities would be unable to feasibly operate, maintain, replace and/or extend the service to the customers it currently serves. In addition, there are no other feasible options for the supply of natural gas to the vast majority of the customers currently served by United Cities in Murfreesboro. These customers depend on United Cities to supply natural gas to their homes and businesses.³

Testimony at the May 28, 2003 Hearing

At the May 28, 2003 Hearing, Mr. Murray adopted his pre-filed testimony filed on January 6, 2003 and further testified regarding the Murfreesboro franchise agreement. Mr. Murray stated that United Cities attempted to negotiate a longer term than fifteen years but was unable to secure a longer term. He stated that most franchise agreements negotiated at the present time are for a much shorter period.

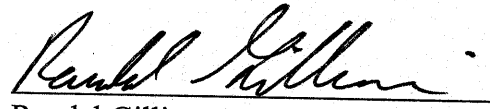
³ Pre-filed Direct Testimony of Jay Murray, January 6, 2003, p. 2.

Findings and Conclusions

United Cities' franchise agreement with Murfreesboro continues a longstanding franchise arrangement in a community where United Cities has extensive operations that rely on use of the public rights-of-way. This franchise arrangement, which was undisputed, has been and continues to be of mutual benefit to United Cities, its customers, and the community. The Hearing Officer finds that this agreement is in the public interest. Accordingly, the Murfreesboro agreement is approved pursuant to Tenn. Code Ann. § 65-4-107.

IT IS THEREFORE ORDERED THAT:

1. The proposed franchise agreement between United Cities Gas Company and Murfreesboro, Tennessee is approved.
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen days from the date of this Order.


Randal Gilliam, Hearing Officer

ORDINANCE NO. 00-0-04 GRANTING TO UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE CITY OF MURFREESBORO, RUTHERFORD COUNTY, TENNESSEE, WITH NATURAL GAS SERVICE, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF MURFREESBORO, RUTHERFORD COUNTY, TENNESSEE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MURFREESBORO, RUTHERFORD COUNTY, TENNESSEE:

SECTION 1. There is hereby granted to United Cities Gas Company, a division of Atmos Energy Corporation, a corporation organized and existing under the laws of the State of Texas and the Commonwealth of Virginia, its successors and assigns (hereinafter for convenience, individually and collectively, referred to as "Company"), the right, authority, privilege and franchise to serve the City of Murfreesboro (hereinafter for convenience referred to as "Municipality"), and in the providing of such natural gas service to construct, maintain and operate a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the distribution of gas, in, upon, under, along, across and over the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the Municipality, for the supplying and selling of gas and its by-products to said Municipality and the inhabitants, institutions and businesses thereof, and for such purposes to construct, lay down, maintain, and operate all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for the transmission, distribution and sale of such to said Municipality and the inhabitants thereof for domestic, commercial, industrial and institutional uses, and other purposes for which it is or may hereafter be used, for a period of fifteen (15) years from and after the passage and approval of this Ordinance.

SECTION 2. As consideration for the grant of the franchise and rights herein and for the use by Company of the streets, roads, highways, alleys, public ways and other real property owned or controlled by the Municipality, Company shall pay to the Municipality a franchise fee equal to the aggregate of the following:

- A. Five percent (5%) of Company's gross receipts derived from the sale by Company of natural gas within the city limits of the Municipality during the preceding calendar year; and
- B. One and seven tenths cents per one hundred cubic feet (\$.017/0 cf) of natural gas transported by Company within the City limits of the Municipality during the preceding calendar year to each customer of Company who has elected to receive only gas transportation service

EXHIBIT

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from Company.

The franchise fee shall be paid to the City quarterly within sixty (60) days of the end of each quarter. The Municipality shall have access at all reasonable times, upon reasonable advance notice, to the relevant books of the Company for the purpose of ascertaining the amount of franchise fee due the Municipality and for the purpose of evaluating the Company's assets in the event the Municipality wishes to consider acquisition as provided below herein in section 16. The Company shall furnish to the Municipality a report showing the amount of gross revenues from Company's sale of gas within the Municipality quarterly.

SECTION 3. The Company shall extend its distribution mains and/or service lines in accordance with the Tennessee Regulatory Authority General Rules and Regulations ("TRA Regulations"). In the event the Company is required to extend its distribution mains pursuant to the TRA Regulations in new subdivision developments or the Company elects to extend its distribution mains in new subdivision developments, the Company shall coordinate the installation of the distribution mains with the installation of other utilities so that the installation occurs prior to the pavement of the streets. The Company must receive written authorization from the city manager in order to install a distribution main in a new subdivision development where the streets have already been paved.

SECTION 4. Until such time as the Municipality gives the Company written notice that the Municipality is prepared to assume responsibility for inspecting gas installations, Company shall continue to provide this service. Upon request from the Customer, the Company will respond to leak investigation notices without charge to the customer. However, the Company is not responsible for maintenance, repair, adjustment and/or replacement of any gas furnace, water heater or other gas appliance.

SECTION 5. The Company shall maintain a customer service office within the corporate limits of the Municipality. The Company shall have local customer service office hours of a minimum of 8:00 am to 4:30 p.m. Monday through Friday, except legal holidays. The Company shall have trained personnel available on a 24 hour - 365 days per year basis who can promptly respond to emergency calls.

SECTION 6. In the event it becomes necessary or expedient for the Municipality to change the course or grade of any highway, street, avenue, road, alley, way, parkway, or other ground on a public right-of-way in which the Company is maintaining gas mains, pipes or other appliances and fixtures, then, upon the written request of the Municipality, the Company will remove or change the location or depth of such mains, pipes or other appliances and fixtures, as necessary to conform to the proposed street alteration at the Company's expense.

SECTION 7. Except as specified in Section 3, nothing herein contained shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas services, from using any easements for gas service which are shown on any plats of any portion of said Municipality heretofore or hereafter platted or recorded or any such easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION 8. All gas mains, service pipes, fixtures, facilities and other appliances so laid, constructed and maintained by virtue of this Ordinance, shall be so laid, constructed and maintained in accordance with all applicable engineering codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee and the Rules and Regulations of the Tennessee Regulatory Authority or of any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be constructed so as not to interfere with the drainage of said Municipality or unreasonably interfere with or injure any sewer or any other improvement which said Municipality has heretofore made or may hereafter make in, upon or along any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground, or unnecessarily impede or obstruct such highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds of said Municipality, and shall conform to the grade as then or hereafter established. The Company agrees to attempt to utilize known right-of-way whenever practical before resorting to right of condemnation to which the Company may be entitled to utilize by law. The Company shall conform with the Ordinances, regulations and policies of the Municipality relating to street cuts and use of public right of ways, as amended from time to time.

SECTION 9. When the streets, avenues, alleys and other public ways are opened, or any other opening is made by the Company within the Municipality, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of the Company, the Company shall place and maintain necessary safety devices, barriers, lights and warnings to properly notify persons of any dangers resulting from such entrances, and shall comply with applicable safety regulations required by federal, state and local laws. The Company shall comply with the ordinances and policies of the City dealing with street cuts and use of the public right of way, as amended from time to time.

SECTION 10. Whenever the Company wishes to enter upon any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground for the purpose of constructing, replacing or repairing any gas mains, pipes, or other appliances, it will notify the

Municipality and file a plan or map of the proposed work, if practicable, before commencing same. Whenever any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public way shall be entered, dug up or disturbed by the Company, the Company shall, at its expense and as soon as possible after the work is completed, restore such highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground in as good condition as existed before the work was done and to the reasonable satisfaction of the Municipality.

The provisions of this section shall not be applied or interpreted in such a way as to prevent or delay Company work that may be required as a result of any emergency, leak or other immediate hazard or danger.

SECTION 11. The Company shall at all times indemnify and hold harmless the Municipality from and against any and all lawful claims for injury to any person or property by reason of the Company or its employees' failure to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavation while said system is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the Municipality on account thereof, and shall have been afforded the opportunity fully to defend the same. If the Company fails to voluntarily assume the defense upon notification gives notice of its intent to defend under reservation of rights, then the Municipality may select the attorney to defend the City. This right of indemnification includes any claim for personal injury, wrongful death, or property damage arising from settlement of a trench of the Company or any failure of the Company to maintain its equipment or appurtenances in any right of way. This right of indemnification includes attorneys fees, reasonable value of the time of attorneys of the City Attorneys office, the costs of engineers, expert witness fees, court reporters and any out of pocket expense reasonably incurred by the Municipality defending same. This right of indemnification applies to any pending claims and those that arise in the future.

SECTION 12. Nothing herein contained shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas services, from using any easements for gas service which are shown on any plats of any portion of said Municipality heretofore or hereafter platted or recorded or any such easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever, subject to the ordinances and policies of the City dealing with street cuts and use of the public right of way, as amended

from time to time.

SECTION 13. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company is prevented, wholly or partially, from complying with any obligation or undertaking contained hereby by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Company is so prevented shall not be counted against Company for any reason. The term "force majeure", as used herein, shall mean any cause not reasonably within Company's control and includes, but is not limited to, acts of God, strikes, lock-outs, wars, riots, orders or decrees of any lawfully constituted federal, state or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this franchise.

SECTION 14. If any section or portion of any section of this Ordinance shall hereafter be declared or determined by any court of competent authority to be invalid, the Company and the Municipality at their election may ratify or conform the remaining portions of this Ordinance and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION 15. The Company shall, within sixty (60) days after the passage of the Ordinance, file with the City Recorder of the Municipality its unconditional acceptance signed by its President or Vice President of the terms and conditions of this Ordinance and after filing of such acceptance, this Ordinance shall constitute a contract between the parties.

SECTION 16.

(A) In the event the Company desires to sell or transfer the entire assets of the Company which are the subject of this ordinance, then the Company must offer to the City the opportunity to buy those assets located and situated in the City upon the same terms as being offered to some other party. A statutory merger, consolidation, recapitalization or sale or transfer of the common stock of the Company does not constitute a sale or transfer of assets for purposes of this section. The City will have up to sixty (60) days to accept the offer and an additional one hundred fifty (150) days from the date of acceptance to close said transaction, in the event the City elects to exercise the option to purchase.

(B) In the event the City chooses not to exercise the option to purchase, the City shall continue to have the right to approve any sale, assignment, or transfer the Company

may desire and this franchise cannot be sold, assigned, or transferred unless and until;

(1) The Company shall have duly executed a good and sufficient instrument making such transfer, assignment or lease, and a duplicate original thereof shall have been filed with the City Manager;

(2) An ordinance of the City consenting to such transfer, assignment or lease shall have been duly adopted and become effective, such consent shall not be unreasonably withheld;

(3) The transferee, assignee, or lessee shall have duly executed a good and sufficient instrument accepting such transfer, assignment or lease, and assumes all the obligations of the Company under this franchise, and an original thereof shall have been filed in the office of the City Manager.

(C) By the acceptance of the franchise, the Company agrees that in any proceeding for the purpose of regulating the rates of the Company, no greater value shall be placed upon this franchise than its actual cost and expense of acquisition. In any negotiations between the City and the Company for the purchase of the Company's property by the City, no value shall be placed upon this franchise by anyone in arriving at the purchase price.

SECTION 17. Both the Company and the City recognize there may be circumstances whereby compliance with the provisions of this Ordinance is impossible or is delayed because of circumstances beyond the Company's control. In this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. In the event of a substantial breach by Company of any material provision of this Ordinance, the City, acting by and through its City Council, may terminate the franchise and rights granted to Company hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

1. The City must deliver to Company, by certified or registered mail, a written notice. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Company that the City contends constitutes a substantial breach of any material provision hereof within 30 days of the alleged breach or within 30 days of the City's actual or constructive notice of the alleged breach whichever is later; and (ii) designate which of the terms and conditions hereof the City contends Company breached.
- 2.. The City shall permit Company the opportunity to substantially correct

and cure all of the breaches hereof set forth in the written notice described in subsection (1) above within thirty (30) days after Company's receipt of such notice before termination may occur.

3. If the Company objects and disagrees with the City's determination that a substantial breach of a material provision has occurred, the Company may submit the issue to the city council for review within thirty (30) days of receipt of the written notice described in subsection (1) above. Termination of this Ordinance shall be stayed during the course of any such review or subsequent litigation on the issue until the matter is either resolved by agreement between the parties or upon entry of a final order of a court authorizing termination by the City.

In the event of termination and/or expiration of this Ordinance, the Company may continue to operate on the same terms and conditions pending either a negotiated sale of its assets, negotiation of a new franchise or condemnation, whichever first occurs, for a minimum period of six months and a maximum period of 24 months, absent agreement of the parties.

SECTION 18. This Ordinance, upon its taking effect, shall supersede any and all prior ordinances, together with any amendments thereof, by the Municipality granting a gas franchise to Company, including, but not limited to, the Ordinance adopted April 24, 1980.

SECTION 19. This franchise is subject to the approval of the Tennessee Regulatory Authority ("TRA"). A copy of written approval of the TRA shall be furnished to the City Recorder by the Company and a copy of same filed with this franchise Ordinance.

SECTION 20. That this Ordinance take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it, upon publication of same in the Daily News Journal pursuant to Section 25 of the Charter of the City of Murfreesboro, and acceptance by the Company as provided in Section 15.

PASSED AND SIGNED, this 8th day of June, 2000.

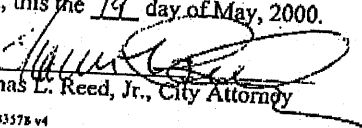
/S/ W. Richard Reeves

W. Richard Reeves, Mayor

ATTEST:

/S/ James B. Penner
James B. Penner, City Recorder

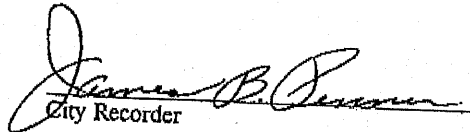
The foregoing Ordinance approved as to form, this the 14 day of May, 2000.


Thomas L. Reed, Jr., City Attorney

STATE OF TENNESSEE)
 : SS:
RUTHERFORD COUNTY)

I, the undersigned, JAMES B. PENNER, do hereby certify that I am the duly appointed, City Recorder of the City of Murfreesboro, Rutherford County, Tennessee, and as such official I further certify that attached hereto is a true and correct copy of an Ordinance passed by the City Council of said City on first reading on May 25, 2000, on second reading on June 1, 2000, and on third and final reading on June 8, 2000.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the Corporate Seal of said City this the 9th day of June, 2000.


City Recorder

(SEAL)